

Reserved Judgment

THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 722 of 2001

1. Smt. Nahida Begum, W/O late Sri Hafeez, aged 50 years
2. Tanveer aged about 14 years, S/O late Sri Hafeez,
3. Sumayala Begum, aged about 12 years (minor)
D/O late Sri Hafeez.
4. Master Phayyaj aged about 10 years (minor)
S/O late Sri Hafeez.

No. 1 to 4 through their legal guardian & mother Smt. Nahida Begum, R/o Bakeri Ka Haata,
Mundey Ka Chauraha, Aasalatpur,
District Moradabad.

... **Appellants.**

Versus

1. Irfan Ahmad, S/O Sri Ikram Ahmad,
R/O Naibasti, Near Taj Masjid,
Haldwani, District Nainital.
2. The Oriental Insurance Company through
Its Divisional Manager, Divisional Office,
Nainital Road, Haldwani (Nainital)

... **Respondents.**

Appeal from Order No. 723 of 2001

Smt. Baha-run, W/O late Sri Sageer alias Bora,
S/O late Sri Baseer alias Kallan,
R/o Dair Ka Chauraha, Bakeri Ka Haata,
Aasalatpur, District Moradabad.

..... **Appellant.**

Versus

1. Irfan Ahmad, S/o Sri Ikram Ahmad,
R/O Naibasti, Near Taj Masjid,
Haldwani, District Nainital.
2. The Oriental Insurance Company through
Its Divisional Manager, Divisional Office,
Nainital Road, Haldwani (Nainital) .

... **Respondents.**

And

Appeal from Order No. 724 of 2001

1. Smt. Nahida Begum, W/O late Sri Hafeez, aged 50 years

2. Tanveer aged about 14 years, S/O late Sri Hafeez,

3. Sumayala Begum, aged about 12 years (minor)

D/O late Sri Hafeez.

4. Master Phayyaj aged about 10 years (minor)

S/O late Sri Hafeez.

No. 1 to 4 through their legal guardian & mother

Smt. Nahida Begum, R/o Bakeri Ka Haata,

Mundey Ka Chauraha, Aasalatpur,

District Moradabad.

... **Appellants.**

Versus

1. Irfan Ahmad, S/O Sri Ikram Ahmad,

R/O Naibasti, Near Taj Masjid,

Haldwani, District Nainital.

2. The Oriental Insurance Company through

Its Divisional Manager, Divisional Office,

Nainital Road, Haldwani (Nainital)

... **Respondents.**

Sri R.B.Agrawal, Advocate, learned counsel for the appellants.

Sri T.A.Khan, Advocate, learned counsel for the respondents.

Coram: Hon'ble Irshad Hussain,J.

Hon'ble B.S.Verma,J.

Date December 18, 2004.

(Per Hon'ble B.S.Verma,J.)

These three appeals under Section 173 of the Motor Vehicles Act, 1988 (for short the act) arise out of the same motor accident and are directed against a common judgment of the Motor Accident Claims Tribunal, therefore, the same are being disposed of by this common judgment.

In the appeals before us the claimants have challenged the finding of the Motor Accident Claims Tribunal/ Addl. District Judge, Nainital (*in short the Tribunal*) passed in M.A.C. petition nos. 250 of 1996, Smt. Nahida and others Vs. Irfan Ahmad and another, 248 of 1996, Smt. Nahida and others Vs. Irfan Ahmad and another, and 246 of 1996, Smt. Baharam Vs. Irfan Ahmad and another, whereby the Learned Tribunal vide judgment and award dated 3-3-2001 awarded compensation of Rs. 50,000/= each in all the three cases on the principle of no-fault liability under Section 140 of the Act alone.

The relevant facts of the case were that three persons namely Waseem Ahmad, aged 16 years, Hafeez, aged 50 years, and Mohd. Sageer alias Bora, aged 38 years, lost their lives in a motor vehicle accident on 06.4.1996. According to the claimants on the fateful day the deceased were going from Almora to Haldwani by Truck DCM Toyota No. UTM -9603 loading thereon skin of animals; that the driver of the truck was driving the said truck rashly and negligently at a high speed; that when it reached near Bohara Kund in the jungle of village Silari in Bhimtal, the truck driver lost control over the vehicle and it fell into a ravine with the result these persons sustained grievous injuries and died on the spot. Their dead bodies were subjected to Post Mortem on 7-4-1996. Hence the claim petitions were filed by the dependents/legal heirs of the deceased. Claimant Smt. Nahida Begum is the mother of deceased Waseem Ahmad and wife of the deceased Hafeez, who preferred separate claim petitions for the death of her husband and son, and the other claimant Smt. Baha-run is the widow of the third deceased Sageer.

The owner of the offending truck Irfan Ahmad filed separate written statement. He admitted ownership of the vehicle as also death of the deceased and stated that the truck was duly insured with the Oriental Insurance Company for the period 1-6-95 to 31-5-96. It was contended that the presence of the deceased was not

within the knowledge of the owner, through their death in the accident was admitted.

The Insurance Company filed its written statement, denied the allegations for want of knowledge. It was asserted that there was no insurance in respect of the death of the deceased and no extra premium was charged by the Company; that the owner has to prove that the truck driver was holding a valid driving licence and owner was having other valid papers. It was pleaded that the insured Rajesh Anand was not the owner of the vehicle, hence Insurance Company was not liable for compensation.

The learned Tribunal framed as many as five issues. Learned Tribunal held that the accident occurred due to failure of steering of the truck but the driver could not control the truck, which fell into a ravine, therefore, it was not a case of rash and negligence on the part of the driver of the truck. It also came to the conclusion that the driver was having a valid driving licence. Ultimately, the learned Tribunal dismissed the claim petitions under Section 166 of the Act, but awarded amount of Rs. 50,000/- in each case under the provisions of no fault liability under Section 140 of the Motor Vehicles Act.

In support of the appeals, it was contended that there was sufficient evidence to show rashness and negligence on the part of the driver of the truck and that the amount of compensation is quite insufficient.

It is not disputed that on the date of accident Irfan Ali was the owner of the vehicle. In the investigation report of the Surveyor of the Insurance Company, it finds mention that the ill-fated truck was transferred in name of Irfan Ali on 30-12-1995 in the records of the R.T.O. It is admitted to the Insurance Company that the name of the insured was Rajesh Anand. D.W.3, witness examined by the Insurance Company, has clearly admitted in his

cross-examination that Irfan Ali was the registered owner of the vehicle on the date of accident and that the vehicle was duly insured with the Insurance Company at the relevant time. The motor accident resulting into grievous injuries and death of the deceased is proved from the admission of the owner of the vehicle Irfan Ahmad in his written statement as well as by his testimony as D.W. 1.

The following are the points for consideration in these appeals:

1. Whether on 6-4-1996 the motor vehicle accident occurred due to rash and negligent driving by the driver of the vehicle DCM-Toyota No. UTM-9603?

2. Whether the Insurance Company is liable to pay compensation?

3. Compensation?

Point No. 1: The factum of accident on the relevant date and place is not disputed. It is also not disputed that the deceased suffered fatal injuries in the said accident. Now, it has to be examined whether the truck driver was negligent and rash in driving the truck at the relevant time or not. P.W. 3, Mahendra Singh Bisht, has been examined on behalf of the claimants. This witness was travelling by the ill –fated truck along with his goods on the relevant day. According to him, three other persons, Waseem, Sageer and Mohd. Hafeez, were also sitting in the truck along with their goods, skin of dead animals, and when the accident took place, he sustained injuries in the accident. This witness became unconscious. This witness has categorically stated that the driver of the truck ran away from the scene of accident. P.W.4, Const. Kundan Singh, was examined on behalf of the claimants. He has proved the enquiry report dated 19-5-1996 prepared by the Station Officer Bhimtal. This report is paper no.. 17-C/3 on record. The name Mahendra Singh, son of Pushkar Singh finds mention in this report. It is significant to mention that this Mahendra Singh told the

enquiring officer that the driver of the truck consumed liquor at Khairna and Bhowali despite objection raised by the persons sitting in the truck. In the said report Mahendra Singh has said that the accident occurred due to the negligence of the truck driver. The inference drawn in the enquiry report clearly shows that the driver of the vehicle was in a state of tipsy and he was driving the truck rashly and negligently. Witness P.W. 4 was cross-examined on behalf of the Insurance Company. The testimony of P.W. 4 Const. Kundan Singh coupled with the enquiry report goes to show that the accident occurred due to rash and negligent driving by the driver of the offending truck. On the other hand, D.W. 2, Farid Ahmad, the driver of the offending truck, in his testimony has tried to show that the accident occurred due to failure of steering and there was rashness or negligence on his part but no efforts were made by him to obtain technical examination report to substantiate his contention. There is an important circumstance, which goes against the stand taken by the driver, is that at the time of accident, he jumped from the truck and escaped, but he never tried to lodge the report of the accident with the police. From the record, it revealed that the information of the accident was given to the police on 7-4-1996 by one Jaswant Singh, driver of Truck No. USR -6981 and on his report, the police came into action. D.W. 2 in his testimony could not dare say that Mahendra Singh son of Pushkar Singh who gave statement to the Station Officer, P.S. Bhimtal to the effect that the driver was intoxicated and was driving rashly was inimical to him or that he was not travelling in the said truck rather from his testimony the contention of P.W. 3 Mahendra Singh, son of Hira Singh that the driver ran away from the spot stands corroborated. In the absence of specific denial by the driver D.W.2 to the effect that witness Mahendra Singh (P.W.3) was travelling in the truck or that Mahendra Singh, son of Pushkar Singh was not present in the truck, it can be safely held that the accident occurred due to rashness and negligence on the part of the driver of the truck. Had the driver D.W. 1 been innocent, he would have informed the police about the accident and would have participated in the rescue work then and

there. Considering the evidence on record in its totality, we are of the considered view that the accident resulting into fatal injuries to the deceased occurred due to rash and negligent driving by the driver of the truck Point No. 1 is answered accordingly.

Point No. 2: It has now to be examined whether the deceased being owner of the goods in the ill-fated vehicle, the Insurance Company was liable for compensation. Claimant Smt. Nahida Begum examined herself as P.W. 1. In her testimony, she has testified that on the relevant date, her husband and son, deceased Hafeez and Waseem respectively were going Almora to Haldwani with the skin of animals. This part of her statement has not been challenged in cross-examination. P.W. -2 Smt. Baha-run, widow of Mohd. Sageer alias Bora has testified that her husband was going from Almora to Haldwani along with skin of goats laded on the truck. P.W. -2 has denied the suggestion that her husband was a gratuitous passenger in the truck. Thus, from the testimony of P.W. 1 and P.W. 2 it is proved that the deceased were owners of the goods loaded on the truck. In the case of ***“Ramesh Kumar Vs. National Insurance Co.Ltd. and others” [2001(3)T.A.C. 639 (S.C.)]*** the Apex Court dealt with the provisions of Section 147 (1)(b) of the Motor Vehicles Act read with 1994 amendment in sub-clause (1) and held that in such cases where deceased or injured persons were travelling in a goods carriage who were owner or his authorised representative, the Insurance Company is liable to pay the compensation. Therefore, in the instant case, the Insurance Company is liable to pay compensation to the claimants. Point No. 2 is answered accordingly.

Point No. 3: Now, it has to be examined as to what will be the proper compensation for the death of deceased persons, namely, Hafeez, his son Vaseem and Mohd. Sageer alias Bora. First we take up the matter in respect of death of Hafeez. Claimant Smt. Nahida (P.W.1) in her statement on oath stated that her husband was earning Rs. 4,000/- per month from the business of animal skins who

used to give her Rs. 3,000/- per month for family expenses. No documentary evidence was led to show the business and income of the deceased. Therefore, in view of Second Schedule of Section 163-A of the Act, notional income of Rs. 15,000/- per annum will be taken for the purposes of determining the compensation. After deducting $\frac{1}{3}^{\text{rd}}$ towards personal expenses of the deceased, the annual loss of dependency comes to Rs. 10,000/-. The age of the deceased Hafeez has been mentioned 50 years in the claim petition. In the Post Mortem Report also, the age of the deceased was shown about 50 years, therefore, the deceased falls in the age-group of 50-55 years. As per Second Schedule, multiplier of 11 shall be applicable to determine the loss of dependency, which comes to get $10,000/- \times 11 = 1,10,000/-$. The claimant shall also be entitled to get Rs. 2000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium. Thus, the claimants Smt. Nahida Begum and others are entitled to total compensation of Rs. 1,17,000/-. On this amount, they shall be entitled to interest @ 6% per annum from the date of filing of claim petition till payment. The amount of Rs. 50,000/- awarded under Section 140 of the Motor Vehicles Act shall be adjusted in the aforesaid compensation amount.

As regards death of Waseem, son of the claimant Smt. Nahida, it may be noticed that he was aged 16 years. According to the claimant, Waseem deceased used to assist his father in skin business and he used to give Rs. 1,000-1,500/- per month to her. Considering all the facts and circumstances of the case and in view of the fact that the claimant Nahida is the mother of the deceased, the age of Smt. Nahida will be taken into consideration for the purposes of multiplier. Taking the notional income, i.e. Rs. 15,000/- per annum of the deceased and after deducting $\frac{1}{3}^{\text{rd}}$ therefrom, annual loss of dependency comes to Rs. 10,000/-. Age of claimant Nahida Begum as stated by PW 1 was 35 years, therefore, she comes in the age group of 35-40 years. Multiplier of 16 shall be applicable in this case, thereby total loss of dependency comes to $10,000/- \times 16 = 1,60,000/-$. The claimant Smt. Nahida suffered loss of love and

affection, therefore, she is entitled to Rs. 5,000/- towards this count and Rs. 2,000/- towards funeral expenses. Thus, the claimants are entitled to Rs. 1,67,000/- as compensation. On this amount, they shall be entitled to interest @ 6% per annum from the date of filling of claim petition till payment.

The deceased Mohd. Sageer was mentioned 38 years of age. His age finds corroboration from the Post Mortem Report. Claimant P.W. 2 Baha-run stated on oath that he used to earn Rs. 4,000/- per month from the skin business of animals and out of this amount, she was being given Rs. 3,000/- but the business of the deceased was not supported by any documentary evidence. Therefore, the notional income of Rs. 15,000/- shall be considered for determination of compensation. After deducting 1/3rd from it, annual loss of dependency comes to Rs. 10,000/-. The deceased falls in the age group of 35-40 years, therefore, multiplier of 16 shall be applied. The total loss of dependency comes to $10,000/- \times 16 = 1,60,000/-$. The Claimant Smt. Baha-run shall be entitled to additional amounts of Rs. 2,000/- towards funeral expenses and Rs. 5,000/- towards loss of consortium. Thus, the claimant is entitled to Rs. 1,67,000/-. On this amount, the claimant shall be entitled to interest @ 6% per annum from the date of filling of petition till payment. The amount of Rs. 50,000/- awarded under Section 140 of the Motor Vehicles Act shall be adjusted towards total amount of compensation.

The point is answered accordingly.

In the result, the appeals are liable to be allowed and the impugned judgment and award, dated 3-3-2001 is liable to be modified as mentioned above.

All the three appeals are allowed. The impugned judgment and award dated 3-3-2001 is modified to the extent that the claimant Smt. Nahida Begum and others shall be entitled to

compensation of Rs. 1,67,000/- (one lac sixty–seven thousand) along with interest @ 6% per annum from the date of filling of petition. i.e. 6-9-1996 till payment in A.O. No. 722 of 2001.

Claimants Smt. Nahida Begum and others shall also be entitled to compensation of Rs. 1,17,000/-(one lac seventeen thousand) along with interest @ 6% per annum from the date of filing of claim petition (6-9-1996) in A.O. No. 724 of 2001.

Claimant Smt. Baha-run shall be entitled to compensation of Rs. 1,67,000/-(one lac sixty–seven thousand) along with interest @ 6% per annum from the date of filing of claim petition (6-9-1996) till payment in A.O. No. 723 of 2001. The amount of Rs. 50,000/- awarded under Section 140 of the Motor Vehicles Act shall be adjusted towards compensation amount.

The compensation and the interest shall be payable by the Oriental Insurance Company- respondent no. 2.

(B.S.Verma,J.)

(Irshad Hussain,J.)